High Maintenance Bitch LLC v. Uptown Dog Club Inc Doc. 16

HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

HIGH MAINTENANCE BITCH, LLC, a Washington LLC,

Plaintiff,

v.

UPTOWN DOG CLUB, INC., a Texas Corporation

Defendant.

No. C07-0888-TSZ

DECLARATION OF LISA WOODY IN SUPPORT OF UPTOWN DOG'S REPLY TO PLAINTIFF'S OPPOSITION TO DISMISS THIS ACTION

Lisa Woody states and declares as follows:

1. I make this declaration in support of Uptown Dog's Reply To Plaintiff's Opposition To Dismiss This Action. I have personal knowledge of the facts set forth in this declaration.

2. I previously submitted a declaration in support of Uptown Dog's Motion to Dismiss and I incorporate that document by reference into this declaration.

3. High Maintenance Bitch overstates what is displayed on Uptown Dog's website. As expressly stated on the website, Uptown Dog has been "seen in" the listed periodicals. Many of the noted periodicals contain articles featuring Uptown Dog and are not incidents where Uptown Dog placed an advertisement for its products.

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Dockets.Justia.com

4. Regarding the *Seattle Dog* periodical, it will not publish until September 2007. It will feature an article by me because I was asked to write an article titled "Gotta Have It". My proposed article will refer readers to local Seattle businesses where readers can purchase featured products for their pets.

5. As I stated in my previous declaration, Uptown Dog is a small business operated from Ms. Bennett's Frisco, Texas home. Other than Elaine Bennett and me, Uptown Dog has only two part-time employees. Although the website may imply otherwise, the majority of those people are not employed by Uptown Dog but they assisted in its limited success by reducing consultation fees, donating time and emotional support.

6. The climate-control smoke-free warehouse noted by High Maintenance Bitch is the air-conditioned bedrooms of Ms. Bennett's home.

7. I have reviewed Uptown Dog business records. We did not sell boa-feather dog collars before March 1, 2004. Since March 1, 2004, Uptown Dog has processed 9,081 orders. Of those orders, only 21 boa-feather dog collars were delivered. Of the 21 boa-feather dog collars, only one was delivered to a Washington address and that delivery occurred on May 5, 2006. That dog collar retailed for $14.99.

8. As previously stated, we do not manufacture the products we sell. Because High Maintenance Bitch has refused to identify the accused products, Uptown Dog has been prevented from tendering its defense to the actual supplier of the accused products. Thus, Uptown Dog has incurred unnecessary legal costs.

9. Uptown Dog offers an online chat assistance on its website. On August 3, 2007, I responded to the following inquiry:

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Here's a transcript of the conversation.

> **[Lisa]** May I help you?
> **[Visitor]** Hi, I'm interested in purchasing one of each of the boas you have - I see that you are in Texas, do you routinely ship into Washington?
> **[Lisa]** We ship all over the USA. But we do not currently have the boas for sale. When did you need them by?
>
> **[Visitor]** It looks like you guys are a small outfit, how can I trust that I will receive my products? Can you give me an idea of your size and experience?
> **[Lisa]** We are in our fourth year. We guarantee that you will receive your products. We offer exceptional customer service and we ship by trackable courier. Our payment gateway uses 128-bit SSL encryption and we've never had our data broken into, stolen, lost or compromised.
> **[Lisa]** Is this our friend in Seattle?
> Visitor disconnects.

As soon as I asked "Is this our friend in Seattle?" the person immediately disconnected the conversation. During this conversation, I did not have my counsel on the line.

At the time of this conversation, there was no listing of boa dog collars on Uptown Dog's website and were not selling boa dog collars at the time. Thus, I am unsure why this person thought Uptown Dog sold boas.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 16th day of August, 2007, in Frisco, Texas.

____

Lisa Woody

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[Lisa] May I help you?
[Visitor] Hi, I'm interested in purchasing one of each of the boas you have - - see that you are in Texas, do you routinely ship into Washington?
[Lisa] We ship all over the USA. But we do not currently have the boas for sale. When did you need them by?

[Visitor] It looks like you guys are a small outfit, how can I trust that I will receive my products? Can you give me an idea of your size and experience?
[Lisa] We are in our fourth year. We guarantee that you will receive your products. We offer exceptional customer service and we ship by trackable courier. Our payment gateway uses 128-bit SSL encryption and we've never had our data broken into, stolen, lost or compromised.
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